IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 6512 OF 2020
IN
WRIT PETITION NO. 4569 OF 2019

ADM Agro Industries Latur and
Vizag Private Limited .. Applicant

Versus

The Maharashtra State Electricity
Distribution Company Limited .. Respondent

Mrs. Deepa Chavan, Advocate Mrs. Radhika Dubey, Advocate and Mr. Shatrajit Baneerji, Advocate i/by Shri Rahul Totala, Advocate for the Applicant.
Shri A. S. Bajaj, Advocate for the Respondent/sole.

**CORAM : S. V. GANGAPURWALA AND
SHRIKANT D. KULKARNI, JJ.**

CLOSED FOR ORDERS ON : 05.08.2021

ORDER PRONOUNCED ON : 02.09.2021

FINAL ORDER (*Per S. V. Gangapurwala, J.*) :-

. The present civil application is filed by the original writ petitioner. The original writ petitioner has filed Writ Petition No. 4569 of 2019 challenging the Commercial Circular No. 53 dated May 07, 2007 and the Commercial Circular No. 97 dated July 28, 2009. The circular stipulates that, if the properties are acquired by the consumer through the Court auction/DRT/Liquidators/Judicial or Statutory body/private sell, the consumer would have to furnish an undertaking that in case matter is decided in favour of respondent in the Supreme Court, the consumer will pay entire electricity due arrears upon the said property along with the interest at the prevailing rate.

2. Upon hearing the learned advocate for the petitioner and the respondent, this Court on 12.03.2020 passed the order as under :

> A] The petitioner shall deposit an amount of Rs. 56,00,000/- with the respondent. The said deposit would without prejudice to the rights and contention of the parties. The same would also depend upon the judgment of the Apex Court in the Special Appeal 5312-5313 of 2005.
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> B] The petitioner may give an undertaking as sought by the respondent. The undertaking given by the petitioner would be subject to the contentions of the petitioner regarding genuineness of the claim and its liability to pay the amount (principle and interest).
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> C] Upon the petitioner paying an amount and executing undertaking as referred above, the respondent shall consider the proposal of the petitioner for sanction of additional load.
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> D] The petitioner shall deposit the aforesaid amount within 8 weeks.
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> E] The aforesaid order is passed keeping the

contention of the parties open.

3. The instant civil application is filed with a prayer to direct the respondent to process the applicant's application for load enhancement dated August 02, 2016 and grant load extension expeditiously in a time bound manner, without any pre-requisite(s) of the undertaking and pass appropriate directions qua the deposit of Rs. 56,00,000/-.

4. Mrs. Deepa Chavan, the learned counsel for the applicant submits that, while raising the dues demand on the applicant, the respondent has raised the demand under Regulation 10.5 of the M. E. R. C. (Electricity Supply Code and other Conditions of Supply) Regulations, 2005 (for short "Regulations of 2005"). The earlier statute and the regime as applicable on 01.01.1995 and 01.04.1998 is inapplicable and not in force in view of Section 1(1) of the Electricity Act, 2003 in 2011, when the applicant acquired plot No. 86 and the applicant applied for additional load on 02.08.2016. The Regulation 10.5 of the Regulations of 2005 shall not apply for the recovery of dues of the erstwhile owners from the new owner. The same cannot be applied in respect of dues prior to 2003. The electricity connection was permanently disconnected of the erstwhile owners on 01.01.1995 and 01.04.1998, as such, Regulation 10.5 of Regulations of 2005 is inapplicable to the dues of erstwhile owners. The proviso to Regulation 10.5 of the Regulations of 2005 stipulates that, the liabilities transferred would be restricted to the maximum period of six months of unpaid charges for electricity supplied to such

premises.

5. The learned counsel submits that, the decision of this Court in a case of **Sambhaji Maharaj Spinning Mill Pvt. Ltd. Vs. State of Maharashtra and others** reported in ***2019(1) Mh. L. J. 521*** clearly provides that Regulation 10.5 is not applicable for a period prior to coming into the force of Regulation and that of the parent act namely Electricity Act 2003 on June 10, 2003.

6. The applicant/petitioner is not liable for the dues of M/s Premier Silicarb Private Limited and M/s Shravani Abrasives Limited. These two entities are not erstwhile owners of the property. The predecessor of the petitioner/applicant in respect of the property are Excel and Teena Oils. The learned counsel also relies on the judgment of the Supreme Court in a case of **Vinod Seth Vs. Devinder Bajaj and another** reported in ***(2010) 8 SCC 01*** and submits that in absence of enabling provision in the contract or in the Code or in the substantive laws, a Court has no power or jurisdiction to direct the petitioner to file an affidavit/undertaking to pay any specified sum to the respondent by way of damages, if the petitioner does not succeed. The law does not contemplate the petitioner indemnifying a respondent for all or any losses sustained by the respondent on account of the litigation by giving an undertaking at the time of filing of petition. The learned counsel also refers to the judgment in a case of **B.C.C. I. Vs. Netaji Cricket Club and others** reported in ***(2005) 4 SCC 741*** to submit that the Court can exercise its powers of review considering all the aspects put forth by the applicant.

The learned counsel relying upon the judgment dated 16.09.2011 of this Court in a case of **M/s Namco Industries Pvt. Ltd. Vs. State of Maharashtra and others** in **Writ Petition No. 9906 of 2010** submits that, Regulation 10.5 of the Regulations 2005 would be restricted to a maximum period of six months of unpaid charges for the electricity supplied to the premises. The said judgment was accepted and referred to by another Division Bench of this Court in Writ Petition No. 4451 of 2013 in a case of **M/s Vision Vidyut Pvt. Ltd. Vs. MSEDCL and others** and it was held that the liability could not be computed for more than six months. The applicant in the present case stands on the better footing. The applicant is 5th purchaser of the properties.

7. Mr. Bajaj, the learned counsel for the respondent submits that, the order was passed by this Court after hearing the parties. The learned counsel further submits that, the learned senior advocate for the applicant/petitioner appearing then had conceded to the deposit of Rs. 56 Lacs. The learned counsel relies upon the judgment of the Apex Court in a case of **Kamlesh Varma Vs. Mayawati and others** reported in ***(2013) 8 SCC 320*** and submits that, the review of the earlier order cannot be sought unless the Court is satisfied of material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice. The review would not be tenable except on an error apparent on face of record. The learned counsel also relies on the judgment of the Apex Court in a case **Tungbhadra Industries Ltd. Vs. Government of Andhra Pradesh Represented by the Dy. Commissioner of Commercial Taxes, Anantpur** reported in ***AIR 1964 SC***

1372 to buttress his submissions that, no error apparent on the face of record exists, as such this Court may not entertain present application. The applicant has not even prayed for modification and/or review of the order in the civil application. The learned counsel submits that, the issue as raised in the present writ petition is also subjudice before the Apex Court and in view of that subject to the decision of the Apex Court, the undertakings are taken. The learned advocate submits that, the applicant had tendered the undertaking after the order was passed by this Court, but not in the form as required. On the contrary in the undertaking the applicant put forth different conditions, which is not acceptable. The petitioner/applicant on one hand contends that Regulation 10.5 of the Regulations of 2005 would not be applicable to the past dues and is also relying upon Regulation No. 10.5.

8. We have considered the submissions canvassed by the learned counsel for parties.

9. On 12th March, 2020, while passing the order, we had heard the learned senior advocate for the writ petitioner and we had recorded in the order that during the course of submissions, the learned senior advocate submits that the petitioner is ready to deposit Rs. 56,00,000/- with the respondent. However, the petitioner is avoiding to execute the undertaking sought by the respondent. We had passed the order on 20th March, 2020 balancing equities. As agreed by the petitioner, we had directed the petitioner to deposit an amount of Rs. 56,00,000/-. We had

observed that, the said deposit would be without prejudice to the rights and contentions of the parties. We had also observed that, the petitioner may give an undertaking as sought by the respondent. The undertaking given by the petitioner would be subject to the contentions of the petitioner regarding genuineness of the claim and its liability to pay the amount (principal and interest).

10. The interim order directing the petitioner to give an undertaking was subject to the contentions of the petitioner regarding genuineness of the claim and its liability to pay the amount. In case the writ petition filed by the petitioner is allowed, the undertaking would not create liability against the petitioner. Same is clearly speltout from our order of which now modification is sought. The undertaking would not cause prejudice to the petitioner/applicant in whatsoever manner. The deposit of amount was on the basis of concession given by the learned senior advocate for the petitioner during the course of arguments on 12th March, 2020. Now the petitioner/applicant cannot turn around and contend otherwise, nor review or modification of the order would be tenable in that regard. The undertaking as observed supra was only a stop gap arrangement made without fastening any liability upon the petitioner pursuant to the undertaking given. The undertaking would not create any new liability upon the petitioner, nor would tantamount to admitting the liability. The matter is subjudice before this Court. In case the petition is allowed, the petitioner would be freed from the undertaking. No rights and liability

would be created pursuant to the undertaking given by the party. We had also clarified in the order of which modification is sought that, upon petitioner paying the amount and executing the undertaking, the respondent shall consider the proposal of the petitioner for sanction of additional load.

11. We do not find that because of the interim order passed any liability would be created upon the petitioner so as to review the order, nor the undertaking would fasten the petitioner with any liability. The merits of the contentions, certainly will have to be gone into in the writ petition. As the petitioner agreed to pay Rs. 56 Lacs during the course of submissions, it would be inappropriate for the petitioner/applicant now to file an application seeking modification of the same.

12. In the light of the above, no case for review or modification of the order dated 20th March, 2020 is made out. The review application is dismissed. No costs.

[SHRIKANT D. KULKARNI, J.] **[S. V. GANGAPURWALA, J.]**

bsb/Sept.21